IN THE HIGH COURT OF JUDICAUTRE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3815 OF 2004

Mr. Sudam Chokha Nikalje ... Petitioner

Vs.

State of Maharashtra ... Respondents

Mr. V.N. Tayade for Petitioner.

Mrs. S.S. Bhende, A.G.P. for State.

CORAM : F.I. REBELLO &
S.P. KUKDAY,JJ.
DATED : MARCH 02, 2005

P.C.

. The Petitioner was chargesheeted for misconduct. In the enquiry conducted, it was held that except Charge No. 5 other charges are proved and accordingly ordered that he be denied promotion and be posted in Class IV category. The Petitioner preferred an appeal against that order. That came to be dismissed on 14.11.1991. He preferred representation to the Commissioner of Pune Division. By his order of 26.6.2000 the Commissioner held that even though in the criminal proceedings court had acquitted the Petitioner from the charge of misappropriation by giving benefit of doubt, the other charges which were framed have been proved. Consequently held that the reversion of the Petitioner from the Post of Talathi to Peon is just and proper. Against this order, the Petitioner preferred Original Application before Maharashtra Administrative Tribunal being O.A. No.

632 of 2000. The learned Tribunal by its order dated 10.12.2003 choose not to interfere with the findings recorded by the authorities below and consequently dismissed the Original Application. It is this order, which is subject matter of the present petition.

. At the hearing of this petition, on behalf of the Petitioner, their learned counsel firstly submits that the Petitioner was acquitted. The learned criminal court found that the prosecution had failed to prove their case and inspite of that held that he is giving benefit of doubt to the Petitioner whereas it ought to have been a clean acquittal. It is therefore, submitted that the punishment imposed on the Petitioner as in criminal proceedings the petitioner was acquitted ought to be set aside.

. In so far as this contention is concerned, it is not for us to interpret the order of the learned criminal court. There were several witnesses who were cited but only four were examined. Based on the evidence, the learned Judge came to the conclusion that the prosecution was unable to discharge the burden cast on it and in these circumstances gave him benefit of doubt. It cannot

be said that this is a clean acquittal warranting quashing of the departmental proceedings against the Petitioner. The first contention therefore, must be rejected. Apart from that it may be noted that there were several charges against the petitioner of which including one of misappropriation. This has been noted by the Revisional authority as also by the learned tribunal.

. It is then set out that the same witnesses were examined in the criminal case and were disbelieved. These were also witnesses who were in the disciplinary proceedings and in these circumstances, their evidence could not have been considered. We have noted that only two of the witnesses are common in the criminal proceedings and the departmental enquiry. Apart from that there were other witnesses examined at the departmental enquiry. The law is now well settled that the standard of proof in the departmental enquiry is different from the criminal prosecution. The departmental proceedings were also held much earlier to the criminal proceedings. Considering that what has to be examined is evidence before the enquiry Officer. The Enquiry Officer has recorded a finding that the Petitioner was guilty of the

charges except for Charge No. 5. The findings has been confirmed by the Appellate authority, Revisional Authority and the Tribunal. We therefore, do not propose to interfere on that count.

. Lastly it is submitted that the complainant Dalvi had grudge and therefore, his evidence had to be discarded. This is not a case of bias in an enquiry Officer. The complainant in the departmental proceedings had to be examined. Merely because he was examined and because there was some grudge as alleged by the petitioner, cannot be a ground for discarding his evidence unless there were sufficient reasons as to reject the evidence of the witness Dalvi. It is not possible for us in the exercise of our extra ordinary jurisdiction to interfere with the findings of fact recorded by the authorities below.

. We find no merit in the petition. Petition accordingly rejected. No order as to costs.

(F.I. REBELLO,J.)

(S.P. KUKDAY,J.)